

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES M. MILLIKEN,

Plaintiff,

vs.

S. ALFARO, et al.,

Defendants.

1:20-cv-00963-NONE-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION TO PROCEED IN FORMA
PAUPERIS BE DENIED AND THAT
PLAINTIFF BE REQUIRED TO PAY
THE \$400.00 FILING FEE FOR THIS
CASE IN FULL
(ECF Nos. 10, 11.)**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

I. FINDINGS

James M. Milliken ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. On July 6, 2020, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On September 14, 2020, Plaintiff filed a motion to proceed *in forma pauperis* along with a certified copy of his prison trust account statement, pursuant to 28 U.S.C. § 1915. (ECF Nos. 10, 11.) Plaintiff's prison trust account statement shows that on September 2, 2020, he had a balance of \$1,644.87 in the account, and his average monthly balance during the past six months was \$3,164.41. (ECF No. 10 at 3.) Under these facts the court finds that Plaintiff can afford the \$400.00 filing fee for this action. Therefore, Plaintiff's motion to proceed *in forma pauperis*

1 should be denied and Plaintiff required to pay the statutory filing fee of \$400.00 for this action
2 in full.

3 Plaintiff claims that he has made multiple attempts to pay the \$400.00 filing fee for this
4 case, but all requests were denied. He asserts that he requested assistance from his correctional
5 counselor, the law library, and the litigation coordinator, without success. Plaintiff claims that
6 he does not know why he is not being permitted to pay the filing fee.

7 **II. RECOMMENDATIONS AND CONCLUSION**

8 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 9 1. Plaintiff's motion to proceed *in forma pauperis*, filed on September 14, 2020, be
10 DENIED;
- 11 2. Plaintiff be required to pay the \$400.00 filing fee for this action in full within 30
12 days; and
- 13 3. Plaintiff be advised to show the court's order to his correctional counselor and
14 follow the procedures required at the prison to arrange for payment of the filing
15 fee to the court.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
18 (**14**) **days** after the date of service of these findings and recommendations, Plaintiff may file
19 written objections with the court. Such a document should be captioned "Objections to
20 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
21 objections within the specified time may waive the right to appeal the District Court's order.
22 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 IT IS SO ORDERED.

25 Dated: September 21, 2020

26 /s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE
28